

SERVICE DATE – JUNE 1, 2012

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

Docket No. AB-33 (Sub-No. 303X)

**Union Pacific Railroad Company—Abandonment of Freight Easement Exemption—
in Alameda and Santa Clara Counties, Cal. (San Jose Industrial Lead)**

Docket No. AB-980 (Sub-No. 1X)

**Santa Clara County Transportation Authority—Abandonment of Residual Common
Carrier Obligation Exemption—
in Alameda and Santa Clara Counties, Cal. (San Jose Industrial Lead)**

BACKGROUND

On April 4, 2012, Union Pacific Railroad Company (UP) and Santa Clara Valley Transportation Authority (VTA) file a joint petition for exemption under 49 U.S.C. §10502 from the requirements of 49 U.S.C. §10903. The joint petition seeks authority from the Surface Transportation Board (Board) for the abandonment of two interests over the same portion of the San Jose Industrial Lead between milepost 7.35 near Warm Springs and milepost 16.30 near San Jose, a distance of 8.95 miles, in Alameda and Santa Clara Counties, CA (Line). First, UP seeks to abandon its freight operating easement on that portion of the San Jose Industrial Lead. Second, VTA (who owns the rail line¹) seeks to abandon its residual common carrier obligation on the same portion of the San Jose Industrial Lead. If the Board should approve this abandonment, freight service would no longer be offered but the rail line itself would be retained and rebuilt for future inclusion in the Bay Area Rapid Transit System ("BART"). A map depicting the Line in relationship to the area served is attached to this Environmental Assessment (EA).

In addition to abandonment authority, UP and VTA (together, the Applicants) also seek an exemption from 49 U.S.C. § 10904 and 49 U.S.C. § 10905—the provisions of the Interstate Commerce Act that establish the procedures for offers of financial assistance and public use. The Applicants explain that the reason they are asking the Board to exempt this abandonment

¹ According to petitioners, VTA purchased the line from UP in December 2002. UP retained an operating easement. See Santa Clara Valley Transp. Auth.—Acquisition Exemption—Union Pac. R.R., FD 34292 (STB served Dec. 26, 2002, and Apr. 30, 2003).

from those two procedures is because the Line, if approved for abandonment, would become part of the BART commuter rail system, thus serving a valid public purpose in itself.

According to UP and VTA, there are two shippers on the Line—Clean Harbors San Jose LLC (Clean Harbors) and Frank-Lin Distillers Products Ltd. (Frank-Lin). These shippers' rail operations would not be effected by the potential abandonment, however, because according to the Applicants, the shippers have ceased using the Line, have relocated their operations, and would continue to be rail served at their new locations.

The Applicants state that there is no reasonable alternative to abandonment of the Line. The Applicants further note that the area also appears to be shifting away from rail oriented industries thus decreasing the likelihood that a major new rail oriented shipper would locate on the Line. In addition, all overhead traffic through San Jose has already been moved to an adjacent UP rail line.

DESCRIPTION OF THE RAIL LINE

The Line is located on the north side of the San Jose, CA. San Jose, with a population of approximately 960,000, is the largest city in the Bay Area, located roughly 50 miles south of San Francisco and 390 miles north of Los Angeles. The San Jose metropolitan area is served by several local and state roads that connect into Interstate 880 (which parallels the Line to the west) and Interstate 680 (which parallels the Line to the east).

UP states that its Warm Springs Subdivision is located adjacent to the west side of the Line between milepost 7.35 and approximately milepost 10.0. In the vicinity of milepost 10.0, the Warm Springs Subdivision heads southward away from the Line. The Applicants opine that it is at this point where new tracks are being constructed, and some existing track being realigned, so that freight trains would be able to depart the Warm Springs Subdivision and travel south to UP's Milpitas Yard.

If abandonment is approved, UP states that it would continue to provide rail service to Warm Springs and Milpitas via the Warm Springs Subdivision and the realigned track described above. In addition, UP would continue to service San Jose via its Warm Spring and Coast Subdivisions and connecting spurs. UP further notes that BNSF Railway also has access to Warm Springs, Milpitas and San Jose over UP lines per existing agreements.

According to UP and VTA, the Line does not contain any federally granted rights-of-way or reversionary property and traverses United States Postal Service Zip Codes 95116, 95122, 95112, 95133 and 94533.

ENVIRONMENTAL REVIEW

UP and VTA jointly submitted an Environmental Report that concludes that the quality of the human environment will not be affected significantly as a result of the abandonment or

any post-abandonment activities, including salvage and disposition of the right-of-way. UP and VTA served the Environmental Report on a number of appropriate federal, state, and local agencies as required by the Board's environmental rules (49 C.F.R. § 1105.7(b)).² The Board's Office of Environmental Analysis (OEA) has reviewed and investigated the record in this proceeding.

Diversion of Traffic

As noted above, should the Board approve the abandonment, the Line would be rebuilt for future inclusion into the BART system. The Applicants state that both Clean Harbors and Frank-Lin have entered into a Memorandum of Settlement Agreement agreeing to termination of service and relocation of their operation to a new rail-served location. Consequently, both Clean Harbors and Frank-Lin would continue to receive direct rail service from UP. The Applicants also note that the City of San Jose would continue to receive rail service from UP lines located adjacent to or in the vicinity of the Line.

Because both Clean Harbors and Frank-Lin have both agreed to relocate and receive rail access from new locations, no rail-to-truck diversions would occur. Therefore, OEA believes that there would be no impact on existing regional or local transportation systems or patterns. Furthermore, because rail service would continue, there would be no effect on the movement and/or recovery of energy resources, recyclable commodities or change in overall energy efficiency.

According to the Applicants, the property is not generally suitable for other public purposes including roads or highways, other forms of mass transportation, conservation, energy production or transmission, as the area is adequately served by existing road and utility lines.

UP and VTA also note that the proposed abandonment would not result in any adverse effects to public health and safety. Furthermore, there are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the right-of-way.

The Applicants are not aware of any wildlife sanctuaries or refuges, or of any National or State parks or forests, that would be affected by the proposed abandonment.

In an email dated July 7, 2011, the U.S. Department of Commerce, National Geodetic Survey (NGS) states that there are approximately 22 geodetic survey markers located in the area of the proposed abandonment. OEA will recommend that UP consult with the NGS prior to the commencement of any salvage activities to allow for relocation of any affected survey markers.

² The Environmental and Historic Reports are available for viewing on the Board's website at www.stb.dot.gov by going to "E-Library," selecting "Filings," and then conducting a search for AB 33 (Sub-No. 303X).

Based on all information available to date, OEA does not believe that the abandonment would cause significant environmental impacts.

HISTORIC REVIEW

In its Historic Report, UP and VTA state that the right-of-way is flat and urban in nature, passing through an older industrial and commercial area. This area comprises primarily trucking/warehousing/ material storage, scrap metal/recycling and vehicle repair businesses. The rail right-of-way of the Line is generally 60 feet wide with a few areas that are 80 feet wide.

According to the Applicants, there are two bridges located on the Line that are 50 years old or older. The first bridge, which is located at milepost 15.19, was constructed in 1958 and would be replaced by BART as part of its proposed transit project. The second bridge, located at milepost 16.1, was constructed in 1957 and is a 200-foot long girder structure crossing Highway 101. This bridge is not designated for use by the BART project.

The Applicants state that they are unaware of any historic sites or structures or archeological resources on the Line or in the project area. Further, they believe that any archeological sites that may exist within the right-of-way would have previously been disturbed during the construction and maintenance of the Line.

According to the Applicants, the Line was constructed in 1921 by the Western Pacific Railroad (WPR). The original WPR was formed in 1865 to construct the western most portion of the Transcontinental Railroad between San Jose, CA and Sacramento, CA. The company was later absorbed into the Central Pacific Railroad in 1870.

Founded in 1903, the WPR was an attempt to break the near monopoly posed by the Southern Pacific Railroad in northern California and was part of the Gould Family's efforts to create a transcontinental railroad in the late 19th and early 20th centuries. The railroad that would become the WPR was financed and built by the Denver and Rio Grande Western Railroad, under the direction of George Jay Gould, to provide a connection to the Pacific coast. The WPR became one of the West's most popular railroads, attracting rail enthusiasts from around the world. From 1910 to 1982, its route provided scenic views of the San Francisco Bay Area, mountain communities of the Feather River Route, and the deserts of Nevada and Utah.³

By the end of 1970, the WPR operated 1,187 miles of road and 1,980 miles of track, not including its Sacraments Northern and Tidewater Southern subsidiaries. In 1983, the WPR was acquired by UP. The Line was purchased from UP by VTA in December 2002.

UP served the Historic Report as required by the Board's environmental rules (49 C.F.R. § 1105.8(a)) on the California State Parks, Office of Historic Preservation (SHPO) on June 3,

³ Historic information obtained from:
http://en.wikipedia.org/wiki/Western_Pacific_Railroad

2011, pursuant to 49 C.F.R. § 1105.8(c). The SHPO has not yet responded to the current petition. Accordingly, we are recommending a condition requiring the UP and VTA to retain their respective interests in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures and objects within the project right-of-way (the Area of Potential Effect) eligible for listing or listed in the National Register of Historic Places until completion of the Section 106 process. Guidance regarding the Board's historic preservation review process is available on the Board's website at <http://www.stb.dot.gov/stb/environment/preservation.html>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the Native American Consultation Database to identify federally-recognized tribes that may have ancestral connections to the project area.⁴ The database indicated that there are no federally-recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way (the APE) of the proposed abandonment.

CONDITIONS

We recommend that two conditions be imposed on any decision granting abandonment authority:

- 1. Union Pacific Railroad Company (UP) and Santa Clara Valley Transportation Authority (VTA), shall retain their interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f, has been completed. UP and VTA shall report back to the Office of Environmental Analysis (OEA) regarding any consultations with the SHPO and the public. UP and VTA may not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.**
- 2. Union Pacific Railroad Company and Santa Clara Valley Transportation Authority shall consult with the National Geodetic Survey at least 90 days prior to the beginning of salvage activities that will disturb or destroy any geodetic station markers.**

⁴ Native American Consultation Database, http://grants.cr.nps.gov/nacd/NACD_Search_Page_Query_Results.cfm (last visited May 28, 2012).

CONCLUSIONS

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, and if the recommended conditions are imposed, that abandonment of the Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite 4-part showing for imposition of a public use condition (49 C.F.R. § 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice. OEA notes that Applicants have requested that the Board exempt this abandonment from the public use and offers of public assistance procedures required by the Interstate Commerce Act.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 C.F.R. § 1152.29).

PUBLIC ASSISTANCE

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this Environmental Assessment, send original and 2 copies to Surface Transportation Board, Case Control Unit, Washington, DC 20423, to the attention of Troy Brady, who prepared this Environmental Assessment. Environmental comments may also be filed electronically on the Board's website, www.stb.dot.gov, by clicking on the "E-FILING" link. **Please refer to Docket No. AB-33 303X and Docket No. AB-980 1X in all correspondence, including e-filings, addressed to the Board.** If you have any questions

regarding this Environmental Assessment, please contact Troy Brady, the environmental contact for this case, by phone at (202) 245-0301, fax at (202) 245-0454, or e-mail at Troy.Brady@stb.dot.gov.

Date made available to the public: June 1, 2012.

Comment due date: July 2, 2012.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Attachment